

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

KIMBERLY L. SIEMERS,

Plaintiff,

Case No. 23-cv-1045-pp

v.

KILOLO KIJAKAZI,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO PROCEED
WITHOUT PREPAYING FILING FEE (DKT. NO. 2) AND ORDERING
PLAINTIFF TO FILE AMENDED COMPLAINT**

The plaintiff has filed a complaint seeking judicial review of a final administrative decision denying his claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. At the same time, she filed a motion for leave to proceed without prepaying the filing fee. Dkt. No. 2.

To allow the plaintiff to proceed without paying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts in the plaintiff's affidavit, the court concludes that she does not have the ability to pay the filing fee. The plaintiff's request indicates that she is not employed, she is not married, and she has no dependents she is responsible for supporting. Dkt. No. 2 at 1. The plaintiff lists income of \$1,148 per month from social security and food stamps, and lists monthly expenses of \$1,045 (\$400 rent, \$645 other household expenses), *id.* at 2-3. The plaintiff

owns a 2019 Honda HRV, worth approximately \$3,200; she does not own her home or any other property of value, and she has approximately \$10 in cash on hand or in a checking or savings account. Id. at 3-4. The plaintiff has demonstrated that she cannot pay the \$350 filing fee and \$52 administrative fee.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner's final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

The complaint does not provide sufficient information for the court to make a determination as to whether the case is frivolous. The complaint does not state a claim at all—it merely indicates that the plaintiff “seeks judicial review . . . of an adverse decision” of the defendant. Dkt. No. 1 at 1. The complaint then states that the plaintiff “seeks a judgment for such relief as may be proper, including costs and attorney’s fees” and “requests this case be reversed and remanded under the fourth sentence of 42 U.S.C. § 405(g).” Id.

The complaint does not inform the court of the reason or reasons the plaintiff believes the Commissioner’s adverse decision was wrong and on what

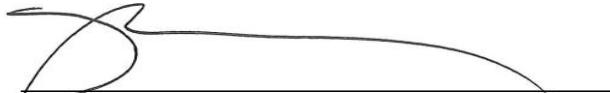
basis she is appealing the Commissioner's decision. Lacking this information, the court cannot conclude whether there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i). The court will allow the plaintiff to file an amended complaint correcting the issues addressed in this order. The plaintiff may want to look for guidance to the Complaint for Review of a Final Decision by the Commissioner of the Social Security Administration, which is available on this court's website, www.wied.uscourts.gov under Forms/Social Security/Complaint-Social Security.

The court **GRANTS** the plaintiff's motion for leave to proceed without prepaying the filing fee. Dkt. No. 2.

The court **ORDERS** that by the end of the day on **August 29, 2023**, the plaintiff must file an amended complaint that informs the court of the basis upon which she is appealing the Commissioner's denial of benefits. If the plaintiff does not file an amended complaint by the end of the day on August 29, 2023, the court may dismiss this case.

Dated in Milwaukee, Wisconsin this 15th day of August, 2023.

BY THE COURT:



HON. PAMELA PEPPER
Chief United States District Judge